

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB AUG. 3, 99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Eran Industries, Inc.

Serial No. 75/117,565

Denise C. Mazour of Zarley McKee Thomte Voorhees & Sease
for Eran Industries, Inc.

Thomas W. Wellington, Trademark Examining Attorney, Law
Office 112 (Janice O'Lear, Managing Attorney)

Before Seeherman, Chapman and Bottorff, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Eran Industries, Inc. has appealed from the refusal of
the Trademark Examining Attorney to register LEAFPROOF as a
trademark for "metal gutter covers having a water channel."¹
Registration has been refused pursuant to Section 2(e)(1)

¹ Application Serial No. 75/117,565, filed June 11, 1996,
asserting a bona fide intention to use the mark in commerce.

of the Trademark Act, 15 U.S.C. 1052(e)(1), on the basis that applicant's mark is merely descriptive of its goods.

Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

We affirm the refusal.

Section 2(e)(1) of the Trademark Act prohibits, inter alia, the registration of a mark which, when used on or in connection with the goods of the applicant, is merely descriptive of them. A term is merely descriptive if, as applied to the goods or services in question, it describes an ingredient, quality, characteristic, function, feature, composition, purpose, attribute, use, etc. of such goods or services. **In re Engineering Systems Corp.**, 2 USPQ2d 1075 (TTAB 1986).

Applicant's mark, LEAFPROOF, clearly and directly conveys the purpose of the product, i.e., that its gutter covers prevent leaves from getting into gutters. The literature applicant has supplied pertaining to its competitors' products show that this is a desirable characteristic of a gutter cover, a fact which applicant itself has acknowledged. "[A]ll of the ads extol the ability of their products to protect gutters from leaves entering the gutters." Brief, p. 4. For example, the brochure for the GUTTER HELMET gutter protection system

says "Gutter Helmet keeps your gutters cleared of leaves and debris in all types of weather for truly comprehensive protection from water damage." The brochure for GUTTER PROTECH states that "No leaves or debris large enough to clog your down spouts can get through the openings in the face of your new gutter protection system." And the brochure for GUTTER TOPPER uses the slogan "The Amazing Leaf Stopper."

Consumers would clearly understand that LEAFPROOF describes this desirable characteristic of a gutter cover. The Examining Attorney has made of record dictionary listings showing that "proof" means "able to withstand; successful in not being overcome; *proof against temptation*" and "impenetrable, impervious or invulnerable: *proof against outside temperature changes*."² Moreover, the advertising literature of applicant's competitors shows that terms such as "leak-proof" and "ice-proof" are used to describe gutter systems. See advertisement for K-GUARD.

Thus, although "leafproof" is not a word found in the dictionary, the meaning of it, in the context of metal gutter covers having a water channel is clear. See, **In re Central Counties Bank**, 209 USPQ 884, 888 (TTAB 1981) ("that

² Random House Unabridged Dictionary, 2d ed. © 1987.

the specific term 'CASH RESERVE CHECKING' is not found in a dictionary of the English language is not controlling on the issue of descriptiveness if the term as a whole immediately conveys a descriptive significance as applied to applicant's services....") In this case, LEAFPROOF directly and immediately conveys the information that applicant's gutter covers protect against, or make gutters impervious to, leaves. We would also point out, in response to applicant's argument that "upon seeing the mark 'Leafproof', one would not know that the goods are 'metal gutter covers having a water channel," brief, p. 2, that the question of descriptiveness is not determined in a vacuum but in relation to the goods on which, or the services in connection with which, it is used. **In re Venture Lending Associates**, 226 USPQ 285 (TTAB 1985).

Finally, applicant argues that its competitors do not use the term "leafproof" to describe their products, and that this means that competitors have no need to use this mark. The fact that a term may currently be in use by only the applicant cannot support the registration sought if the mark as used projects only a merely descriptive significance. See **In re Tekdyne Inc.**, 33 USPQ2d 1949, 1953 (TTAB 1994).

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Decision: The refusal of registration is affirmed.

E. J. Seeherman

B. A. Chapman

C. M. Bottorff
Administrative Trademark Judges
Trademark Trial and Appeal Board